From: Tim Bray
To: Microsoft ATR
Date: 1/23/02 2:13pm
Subject: Microsoft Settlement

My name is Tim Bray. I am founder and CEO of a software
company named Antarcti.ca Systems Inc. I have been in the software
business continuously since 1981 and have co-founded another comany,
Open Text Corporation, that is now publicly listed (Nasdaq:OTEX).
I have contributed an open-source software module named "Bonnie"
that is now a part of virtually every Linux distribution. Working
under the auspices of the World Wide Web Consortium, I was one of the
leaders in development of Extensible Markup Language (XML), now
becoming a key internet standard, serving as co-editor of the
specification of XML itself and one of its key supporting
technologies. I currently serve as a member of the Web Corsortium's
Technical Architecture Group, its architectural oversight committee
for Web technologies as a whole.

I have read the full text of the original judgement in the MS case,
the full text of the appeal judgement, and the full text of the
proposed settlement.

I consider that the proposed settlement deficient in several
respects.   I limit comments to areas where my expertise and
experience may lend them some standing:

1. The definitions of terms such as "API" and "Middleware" are
   insufficiently detailed and far-ranging and would allow the
   defendent considerable maneuvering room to mount legal defenses
   for continuing the behavior found illegal. Also it is troubling
   that the definition of "Middleware" is not particularly consistent
   with those in the original court's Findings of Fact.

2. The settlement's attempt to force Microsoft to open up its APIs
   seems very unlikely to bring a stop to the practices in this area
   that were found illegal. In particular

   - the requirement for disclosure is much to late in the product
     development cycle, effectively allowing Microsoft to continue
     to use secrecy and manipulation of APIs as an anticompetitive
     weapon in the software industry.
   - the limitations of the use to be made of the API disclosures are
     too far-reaching and it is hard to understand what benefit they
     convey to anyone.
   - the undocumented binary file formats used by many Microsoft
     applications are in effect part of the API but are not covered
     by the definitions

My decades of experience in the development and marketing of
software products have led me to the opinion that the veiling
and manipulation of APIs has been among the primary weapons
used by Microsoft to extend their Windows monopoly into the
domain of other unrelated software products. I would go so far
as to predict that if this problem can be cleared up, market
forces and the high level of creativity in the software business
would probably suffice to bring a general halt to the illegal
behavior without further court intervention.

3. There is reason for strong doubt whether the "Technical Committee"
   will prove effective as an enforcement vehicle. Problems include:
   - the requirement that members not have been employed by MS or a
     competitor to MS in the past year doesn't work. First, it is
     very difficult to work for a technology company that doesn't
     compete with Microsoft in some area. Second, the only way to
     acquire the necessary insight into the business is to have
     worked for MS or a competitor.
   - The level of compensation is not specified - what motivation
     does the defendent have for providing a level of compensation
     necessary to attract people with the right qualifications?
   - the gag order on the TC members seems counter-productive. One
     of the most effective disincentives to continuing illegal
     behavior on the part of the defendent would be the threat of
     throwing the light of day on such practices.

Cheers, Tim Bray, Founder, Antarcti.ca Systems
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